

***United States Court of Appeals
for the Second Circuit***



AMICUS BRIEF

ORIGINAL 77-4157

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

Petitioner,

v.

UNITED STATES NUCLEAR REGULATORY
COMMISSION AND UNITED STATES OF
AMERICA,

Respondents.

No. 77-4157

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Petition for Review of an
Order of the Nuclear Regulatory Commission

BRIEF FOR CALIFORNIA ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION
AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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Statement of Interest of Amicus Curiae

This brief is filed on behalf of the State Energy Resources Conservation and Development Commission (hereinafter "Energy Commission"), an agency of the State of California, created in 1975 to deal comprehensively with the state's energy problems. (Cal. Pub. Resources Code § 25000 et seq. (West 1977).) This brief addresses solely the issue as to whether the Nuclear Regulatory Commission should conduct a rulemaking proceeding to determine whether radioactive wastes generated in nuclear power reactors can be subsequently disposed of without undue risk to the public health and safety. The brief does not address the issue raised by NRDC's request that the NRC "refrain from acting finally to grant pending or future requests for operating licenses until such [time] as the definitive finding of safety can be made."

The California Legislature intended, among other goals, to provide a central authority in state government to strike the necessary balances inherent in providing electricity for the citizens of the state.^{1/} As one of its responsibilities, the Energy Commission grants permits for the

1.

§ 25001. The Legislature hereby finds and declares that electrical energy is essential to the health, safety and welfare of the people of this state and to the state economy, and that it is the responsibility of state government to ensure that a reliable supply of electrical energy is maintained at a level consistent with the need for such energy for protection of public health and safety, for promotion of the general welfare, and for environmental quality protection.

Footnote 1. continued.

§ 25002. The Legislature further finds and declares that the present rapid rate of growth in demand for electric energy is in part due to wasteful, uneconomic, inefficient, and unnecessary uses of power and a continuation of this trend will result in serious depletion or irreversible commitment of energy, land and water resources, and potential threats to the state's environmental quality.

§ 25003. The Legislature further finds and declares that in planning for future electrical generating and related transmission facilities state, regional, and local plans for land use, urban expansion, transportation systems, environmental protection, and economic development should be considered.

§ 25004. The Legislature further finds and declares that there is a pressing need to accelerate research and development into alternative sources of energy and into improved technology of design and siting of power facilities.

§ 25005. The Legislature further finds and declares that prevention of delays and interruptions in the orderly provision of electrical energy, protection of environmental values, and conservation of energy resources require expanded authority and technical capability within state government.

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§ 25006. It is the policy of the state and the intent of the Legislature to establish and consolidate the state's responsibility for energy resources, for encouraging, developing, and coordinating research and development into energy supply and demand problems, and for regulating electrical generating and related transmission facilities.

Code § 25500 (West 1977).) Before granting any such permits, the statute requires detailed studies, hearings, and findings by the Energy Commission on a wide variety of matters including the need for additional generating capacity and the safety and reliability of proposed plants.^{2/}

Even in the absence of these specific statutory requirements, the Energy Commission would have a strong interest in having the Nuclear Regulatory Commission (hereinafter "NRC") conduct a rulemaking on the safety of long-term waste disposal. First, every citizen has an interest in the maintenance of a safe, healthful environment for this generation and those to follow. All California agencies are responsible for environmental protection pursuant to the California Environmental Quality Act, (Cal. Pub. Resources Code § 21000 et seq. (West 1977)), the California equivalent of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq. Moreover, the Energy Commission's specific responsibility to choose appropriate methods to provide electrical power for the people of California is made much more difficult by the NRC's "Denial of the Petition for Rulemaking" (hereinafter "Denial") challenged herein. The NRC's present posture leaves in doubt not only the safety of

2. See, e.g., Cal. Pub. Resources Code §§ 25511-14, 25523. More recently, the Legislature has asked the Energy Commission to consider additional specific matters with respect to nuclear powerplants. Cal. Pub. Resources Code §§ 25524.1, 25524.2, 25524.3 (West 1977).

nuclear power, but its economic attractiveness as well most dramatically because of the possibility of future shutdown of reactors should no solution be forthcoming. While such a shutdown would no doubt be disruptive even now, it would be disastrous in the future for those states which have relied most heavily on nuclear power. The current NRC policy of requiring on-site storage for the waste generated during basically an indefinite period also serves to make analyses of nuclear powerplants more difficult since it is not known for how long this situation will obtain. The Energy Commission's choice among the limited alternatives available to it is made even more difficult by this factor.

In an attempt to help the NRC deal with this difficult problem, the Energy Commission has participated in the NRC's "S-3" proceeding dealing with the environmental impacts of the uranium fuel cycle (UFC).^{3/}

Thus, the Energy Commission believes that the rulemaking requested by petitioner is vital not only to its own concerns, but to the health, safety, and economic well being of all of the people of California and indeed the country as a whole.

3. The S-3 proceeding is an attempt to develop a numerical table to describe the incremental environmental effects stemming from the uranium fuel cycle attributable to the licensing of an individual light water reactor. The validity of that proceeding is still being litigated. Natural Resources Defense Council v. Nuclear Regulatory Commission, 547 F.2d 633 (D.C. Cir. 1976) cert. granted sub nom. Vermont Yankee Nuclear Corp. v. Natural Resources Defense Council, 429 U.S. 1090 (1977) ("Vermont Yankee".) For a discussion concerning the relationship of Vermont Yankee to the instant case see infra at Argument II.

Statement of the Case

As the petitioner's brief notes,^{4/} the wastes inevitably created by the current types of nuclear power-plants include some of the most toxic substances known. It has been recognized by many authorities that the generation, handling, and storage of nuclear wastes, including plutonium, may be the greatest danger posed by the nuclear power industry,^{5/} an industry in which great potential danger is commonplace and has generally led to redundant safeguards. In the area of waste management, however, research into both the dangers of radioactive waste and possible solutions has been seemingly haphazard, with the NRC and Atomic Energy Commission (AEC) before it remaining seemingly unconcerned as each of a number of potential solutions was rejected for technical or political reasons. (See Brief for Petitioner at 9-14.)

Despite, or perhaps because of, these failures, the NRC refused in the proceeding here under review to institute a rulemaking proceeding to determine the safety of waste disposal.

In its "Denial of Petition for Rulemaking" (hereinafter "Denial") the NRC argued that neither the statutes

4. Brief for Petitioner at 6-9.

5. See, e.g., Royal Commission on Environmental Pollution, Sixth Report: Nuclear Power and the Environment 80-82 (1976) (hereinafter "Royal Commission Report"). See also J. McPhee, The Curve of Binding Energy (1974).

governing its operation nor its own regulations required that it consider the long-term storage of radioactive wastes when licensing an individual power reactor. It stated that "detailed questions" about the safety of long-term waste disposal should be considered only in "connection with the licensing of an actual high-level waste disposal facility, rather than in connection with licensing of reactor operation. . . ." Record at 509-10, NRC Denial at 4-5. The NRC did, however, recognize that it has a statutory responsibility under some conditions to take action based on problems with long-term waste storage:

"As part of the licensing process for an individual power reactor facility, the Commission does review the facility in question in order to assure that the design provides for safe methods for interim storage of spent nuclear fuel. But it is neither necessary nor reasonable for the Commission to insist on proof that a means of permanent waste disposal is on hand at the time reactor operation begins, so long as the Commission can be reasonably confident that permanent disposal (as distinguished from continued storage under surveillance) can be accomplished safely when it is likely to become necessary. Reasonable progress toward the development of permanent disposal facilities is presently being accomplished." Record at 508-09, NRC Denial at 3-4.

"The hazards associated with permanent disposal will become acute only at some relatively distant time when it might be no longer feasible to store radioactive wastes in facilities subject to surveillance. The Commission would not continue to license reactors if it did not have reasonable confidence that the wastes can and will in due course be disposed of safely." Record at 519, NRC Denial at 14.

The Denial at no point explains how it is that the NRC is not required to make the finding of safety requested by the petitioner herein, but would be required to take action should its view of the probability of success of efforts to find a solution to the long-term waste storage problem change.

Disturbingly, the NRC's Denial does little to convince the informed reader that "reasonable progress" is being made toward a solution of the problem. The Energy Commission joins with NRDC in believing that the documents cited in the Denial are insufficient to support a finding of "reasonable progress," or "reasonable assurance" of ultimate success. This is particularly true in view of the chaotic history of the efforts so far and the substantial doubts expressed by outside experts concerning the likelihood of success of the present program. For example, a General

Accounting Office found that not only has progress to date been negligible, but that future program goals are overly optimistic.^{6/} See Brief for Petitioner at 14-19. Even assuming that "reasonable progress" is being made at the present time would not lead to the conclusion that reactor licensing should continue unrestrained until an assured solution has been found.^{7/}

6. General Accounting Office, Report to the Congress, The United States Nuclear Energy Dilemma: Disposing of Hazardous Radioactive Wastes Safely (September 9 1977).

7. The British Royal Commission on Environmental Pollution has stated:

"We have described . . . the problems associated with the management and disposal of highly radioactive wastes arising from the nuclear fuel cycle. Such wastes will remain active over immense time scales, and unless continuously isolated will present dangers to our remote descendants long after nuclear fission technology has ceased to be used as a source of energy. We believe that a quite inadequate effort has been devoted to the problems of long-term waste management, and that there should be no substantial expansion of nuclear power until the feasibility of a method of safe disposal of high level wastes for the indefinite future has been established beyond reasonable doubt. There are promising ideas for the disposal of these wastes but it may take 10 to 20 years to establish their feasibility." Royal Commission Report, supra, fn. 5 at 192-93.

ARGUMENTS

I

The Denial of the Petition for Rulemaking Is Not Supported by the Federal Statutes

In denying the rulemaking herein, the NRC necessarily and explicitly found that the statutes under which it licenses reactors for the production of electrical power while requiring "some kind of safety finding" do not require a finding on the safety of long-term waste disposal. Record at 509, NRC Denial at 4. This interpretation of the statutes is contrary to the express language of the statutes in question, and undermines the NRC's role of assuring the safety of the nuclear industry.^{8/} The primary statute upon which this case turns, as the NRC recognizes, is section 103(d) of the Atomic Energy Act, 42 United States Code section 2133(d), which contains the public health and safety requirement for commercial reactor licenses. It provides, in full:

"(d) No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement

8. The NRC was established by the Energy Reorganization Act of 1974, 42 United States Code section 5801 et seq., by dividing the functions formerly exercised by the Atomic Energy Commission, giving the NRC only regulatory and licensing functions. 42 United States Code section 5841-49.

for cooperation arranged pursuant to section 2153 of this title, or except under the provisions of section 2139 of this title. No license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety to the public. [Italics supplied.]

The statute could hardly be more clear in stating that all factors which would tend to make the issuance of the license "inimical to the common defense and security or to the health and safety of the public" should be considered by the NRC in determining whether to grant a license. Indeed, one would obviously expect Congress to require the commission regulating the nation's country nuclear industry to assure itself and the people that no danger is being ignored during licensing proceedings.

The Denial, however, rests to a great extent on the premise that the NRC is circumscribed in its reactor licensing hearings to a consideration of threats posed by

the operation of the reactor itself and the short-term storage of wastes generated by the reactor:

"As petitioner states, the Atomic Energy Act clearly requires that some kind of safety finding be made prior to issuance of an operating license for a nuclear power reactor. (NRDC Petition, at 4-9.) Section 103d of the Act provides that no license for a production or utilization facility may be issued if, in the opinion of the Commission, the issuance of the license would be inimical to the health and safety of the public. It seems clear, however, that the statutory findings required by section 103 apply specifically to the 'proposed activities' and 'activities under such licenses.' (42 U.S.C. 2133.) These activities include some interim storage activities for spent fuel. They do not include the permanent disposal of high-level wastes though wastes are, in fact, generated by operation of the reactor." Record at 509, NRC Denial at 4.

This conclusion, based as it is on phrases drawn from a different subsection (42 U.S.C. § 2133(b)), is simply not supported by the statutory language. We believe it is totally inappropriate and an attempt by the NRC to avoid its clear statutory responsibility to guard the "health and safety of the public."

The NRC also argues that the fact that the Atomic Energy Act provides for one-stage licensing for those receiving nuclear material and two-stage licensing for facilities such as nuclear power plants somehow supports its refusal to conduct a rulemaking on long-term waste disposal prior to the receipt of a license application for a facility designed for that purpose. Record at 510, NRC Denial at 5. Its discussion on this point is exceptionally vague and conclusory, but the argument seems to be that since a waste disposal facility would be licensed under the one-stage process it must be that Congress intended consideration of all long-term waste disposal questions to be treated only at that stage. Nothing whatever in the language of the Act compels or even supports this view, and it is directly contrary to the express language of 42 United States Code section 2133(d), quoted above, which does not draw any distinction between types of hazards.

The final code section relied upon by the NRC to support its argument concerning its statutory duties is 42 United States Code section 2232, which deals chiefly with the information which must be provided by applicants for licenses. It provides in part:

"In connection with applications for licenses to operate production or utilization facilities, the applicant shall state such technical specifications, including information of the amount, kind, and source of special nuclear material required,

the place of the use, the specific characteristics of the facility, and such other information as the Commission may, by rule or regulation, deem necessary in order to enable it to find that the utilization or production of special nuclear material will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public."

Only two remarks seem necessary. First, it would seem reasonable to believe that Congress intended the NRC to consider hazards not peculiar to individual facilities without requiring redundant information concerning such hazards from each applicant. Thus, although the material used to fuel reactors "causes" their unique hazards, the NRC does not require each applicant to describe the properties of the various elements involved in the facility's operation. This cannot mean that the NRC cannot consider the properties of nuclear fuels when licensing reactors. Second, the code section in fact does not limit in any way the material the NRC may request in a license application to fulfill its statutory duty "to find that the utilization or production of special nuclear material will be in accord with the common defense or security and will provide adequate protection to the health and safety of the public." If the Congress intended by the enactment of this section to restrict in a

fundamental way safety responsibilities of the NRC it could not have chosen less apt language.

II

The NRC's Crabbed Interpretation of its Statutory Mandate is Contrary to the Interpretation Required by the National Environmental Policy Act (NEPA)

It is surely clear by now that the National Environmental Policy Act of 1969 (NEPA), 42 United States Code section 4321 et seq., makes environmental protection a part of the statutory mandate of every agency of the federal government. The NRC's predecessor was told precisely this some six years ago in the leading case of Calvert Cliffs' Coordinating Comm. v. A.E.C., 449 F.2d 1109 (D.C. Cir. 1971).

Most cases dealing with NEPA, however, have examined closely only the requirements of section 102(2)(c), 42 United States Code section 4332(2)(c), which requires the filing of a detailed Environmental Impact Statement (EIS) before taking a major federal action significantly affecting the quality of the human environment. The NRC has recognized its responsibilities under this provision to prepare some form of impact statement to consider the environmental effects of nuclear waste disposal. The NRC agrees that an EIS must be prepared prior to the licensing of a long-term waste disposal facility. In addition, the NRC is presently engaged in a proceeding to devise one. The end result of the process is apparently going to be a numerical table referred to as "S-3"

attempting to quantify the effects of an average nuclear power reactor. The United States Court of Appeals for the District of Columbia Circuit invalidated the NRC's first attempt because of an inadequate consideration of the waste disposal issues. A writ of certiorari has been granted by the United States Supreme Court. Natural Resources Defense Council v. NRC (D.C. Cir 1976) 547 F.2d 633, cert. granted sub nom. Vermont Yankee Nuclear Corp. v. Natural Resources Defense Council (1977) 429 U.S. 1090.

The Energy Commission believes it is important to understand the relationship between the S-3 proceeding and the rulemaking requested here. In S-3, the NRC will only be producing a table describing environmental impacts from the licensing of one light-water reactor. No matter how accurate or detailed this statement becomes, it will be essentially descriptive rather than normative. It will not, in other words, decide what level of risk is acceptable but only what level of risk will exist if certain actions are taken. The rulemaking requested in this proceeding concerns the NRC's specific statutory mandate under the Atomic Energy Act to assure that the issuance of licenses for a nuclear reactor is not "inimical to the common defense and security or to the health and safety of the public." 42 United States Code section 2133(d). Thus, while the S-3 proceeding should develop information relevant to the question at issue here, it will in no way make this case moot.

Another much less frequently considered requirement of NEPA has a more direct bearing on these proceedings. If there is any residuum of doubt concerning the correct interpretation of the sections of the Atomic Energy Act involved in this case, e.g., 42 United States Code section 2133(d), NEPA requires both the NRC and this Court to adopt an interpretation in accordance with NEPA's policies. This requirement is set out in 42 United States Code section 4332:

"The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter"

One of the six specific goals set out in NEPA is that the nation "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations" 42 United States Code section 4331(b)(1).

The NRC's crabbed interpretation of its responsibilities mocks this directive some five years after its predecessor was forcefully instructed about its duty to comply fully with NEPA. Calvert Cliffs' Coordinating Comm. v. A.E.C., 449 F.2d 1109 (D.C. Cir. 1971).

One of the few cases discussing this issue involved a suit by the NRDC to force the Securities and Exchange Commission to require corporations to disclose the impact their activities were having on the environment. The court,

in discussing the implications of 42 United States Code section 4332(1), said:

"Superimposed upon this grant to the SEC of broad rulemaking authority is the Congressional mandate to the federal agencies which is contained in NEPA; that is, NEPA gives specific content to the SEC's authority under the securities laws to require disclosure of information 'in the public interests' Thus, Congress has directed the SEC and this court to interpret the securities laws to the fullest extent possible in accordance with the overriding Congressional mandate of NEPA to protect and enhance the Nation's environment. . . ."

[Footnote omitted. Emphasis in original.] Natural Resources Defense Council v. S.E.C., 389 F.Supp. 689, 695 (D.C.D.C. 1974).

As argued above, the Atomic Energy Act itself requires that the NRC's action be reversed and remanded. This conclusion is reinforced by the commands of NEPA.

III

There Has Been No Implicit Ratification by Congress of the NRC's Failure to Consider Fully the Long-Term Waste Disposal Issue

The amicus adopts the portion of the NRDC's brief dealing with the NRC's "tacit approval" argument. It should further be noted that the NRC's view of congressional satisfaction with the regulation of nuclear power is undermined

greatly by the Energy Reorganization Act of 1974, 42 United States Code section 5801 et seq., the statute which created the NRC partly as a response to concern over the adequacy of the former regulatory system:

"The reorganization established by this legislation has the additional purpose of separating the regulatory functions of the A.E.C. from its developmental and promotional functions -- a response to growing criticism that there is a basic conflict between the AEC's regulation of the nuclear power industry and its development and promotion of new technology for the industry." S.Rep. No. 93-980, 93d Cong., 2d Sess., U.S. Code and Cong. News, 5470, 5471 (1974).

It is somewhat discouraging to hear the NRC arguing, only three years after its creation, that Congress has acquiesced in the current regulatory scheme since:

"Congress is and has been aware of the high-level waste disposal problem, aware of its connection to reactor operations, and aware that the Commission does not plan to defer licensing until the problem is resolved." Record at 506-07, NRC Denial at 1-2.

A more plausible conclusion might be that Congress, concerned about waste disposal and other safety questions,

created the NRC in the hope that the health and safety of the public would receive more responsible consideration.

IV

The NRC Has Misconstrued the Petition
for Rulemaking and Consequently Its Own
Responsibilities

The NRC's denial of the petition for rulemaking misconstrues the request filed by NRDC and then proceeds to destroy the strawman it erected.

In the third paragraph of the denial, the NRC described the NRDC's request as follows:

"Natural Resources Defense Council (hereinafter 'NRDC') petitioned the Nuclear Regulatory Commission (1) to conduct a rulemaking proceeding to determine 'whether radioactive wastes can be generated in nuclear power reactors and subsequently disposed of without undue risk to the public health and safety, and (2) to refrain from acting finally to grant pending or future requests for operating licenses until such as the definitive finding of safety can be made.' (NRDC Petition, at 15.)" Record at 515, NRC Denial at 10.

After thus quoting from the petition to describe the nature of the proceeding, a mere two paragraphs later the Denial, in explaining the basic reason why the Petition is unreasonable, alters the description of what the Petition seeks:

"After thorough study of the petition and exhibits submitted therewith and analysis of the comments, the Commission has concluded that it is not obligated to make a 'definitive' finding, nor is it appropriate to make the 'definitive' finding requested by NRDC, that safe methods of high-level waste disposal are not available prior to the licensing of a reactor. Because the petition seeks a finding that safe waste disposal can be accomplished immediately, the Commission has determined that the rulemaking petition should be denied. Record at 508, Denial at 3.

The dichotomy between these two paragraphs is revealing. The petition does not ask that the NRC insist on proof that a "means of waste disposal is on hand at the time reactor operations begins." The petition only asks that the NRC determine whether permanent disposal of the waste inevitably generated by reactors now being licensed "can be accomplished safely when it becomes necessary." The requirement of this finding prior to licensing is completely consistent with the statutes, whether or not the technology to accomplish disposal is available when the reactor under consideration is to be completed.

Indeed, in the absence of the requested finding, continuing to license reactors which inevitably generate

large amounts of highly toxic wastes seems rather clearly irresponsible.

The NRC itself seems troubled by this, and in its attempt to avoid seeming irresponsibility, admits that long-term waste disposal technology is in fact considered at present in licensing proceedings.

It says that "reasonable progress"^{9/} is being made on the problem and that licensing should be continued as long as the NRC is "reasonably confident that permanent disposal (as distinguished from continued storage under surveillance) can be accomplished safely when it is likely to become necessary."^{10/} The NRC then argues that only at an actual licensing proceeding for "an actual high-level waste disposal facility" are "detailed questions" concerning the "safety of permanent disposal" to be addressed.

Thus, the NRC's position seems to be that it should not give the long-term waste disposal problem serious consideration until such time as a solution has been found by other agencies. (Principally the Energy Research and Development Administration. Record at 511, NRC Denial at 6.) In the meantime, the NRC will allow the acceleration of waste increase by licensing additional reactors in the absence of the requested safety finding. The Denial does not discuss the obvious fact that even if the finding of "reasonable

9. Record at 509, NRC Denial at 4.

10. Record at 508-09, NRC Denial at 3-4.

progress" is correct (and this seems quite undocumented, see supra, section II), "reasonable progress" does not guarantee a solution. Nor does the Denial examine the possible consequences of a failure of the efforts to find a solution. As noted above, these consequences could be a danger to public health and safety as well as to the nation's economic well-being.

Finally, however, the NRC does flatly admit that it considers long-term waste disposal:

"The Commission would not continue to license reactors if it did not have reasonable assurance that the wastes can and indeed will be disposed of safely." Record at 519, NRC Denial at 14.

This perfectly reasonable statement is, in fact, an admission of the fallacy of the NRC's primary argument, i.e., that there exists no statutory authority or requirement for the NRC to consider long-term waste disposal in individual licensing decisions.

In his separate statement in Vermont Yankee,^{11/} Judge Tamm said:

"I agree with the majority that NEPA requires the Commission [NRC] fully to assure itself that safe and adequate storage methods are technologically

11. Natural Resources Defense Council v. N.R.C. (D.C. Cir. 1976) 547 F.2d 633, cert. granted sub nom. Vermont Yankee Nuclear Corp. v. Natural Resources Defense Council (1977) 429 U.S. 1090.

and economically feasible. It forbids reckless decisions to mortgage the future for the present, glibly assuring critics that technological advancement can be counted upon to save us from the consequences of our decisions." 547 F.2d at 658.

This statement is totally applicable to the instant case, save only that "the Atomic Energy Act" must be substituted for "NEPA." Indeed, the remark is perhaps more apt here since the Atomic Energy Act even more clearly than NEPA requires that the NRC's overriding responsibility is to safety. Here, as in Vermont Yankee, the NRC has substituted "glib assurances" for reasoned decision making.

CONCLUSION

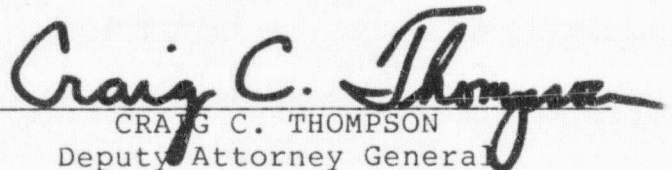
For the foregoing reasons, the decision of the Nuclear Regulatory Commission should be reversed and remanded for the requested rulemaking.

DATED: December 7, 1977.

Respectfully submitted,

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STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

AFFIDAVIT OF SERVICE BY MAIL

PHYLLIS HORNE, being duly sworn, deposes and says:
That affiant is a citizen of the United States, over the
age of 18 years, and not a party to the within action; that
affiant's place of employment and business address is
555 Capitol Mall, Suite 350, Sacramento, CA 95814. That
on the 7th day of December, 1977, affiant enclosed two true
copies of the within BRIEF FOR CALIFORNIA ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION AS AMICUS CURIAE
IN SUPPORT OF PETITIONER in an envelope for each of the
persons named below, addressed to each of them at the
address set out immediately below each respective name,
sealed said envelope, and deposited the same in the United
States Mail at the City of Sacramento, County of Sacramento,
State of California, with postage thereon fully prepaid;
that there is delivery service by United States Mail at
each of the places so addressed, or there is regular com-
munication by mail between the said place of mailing and
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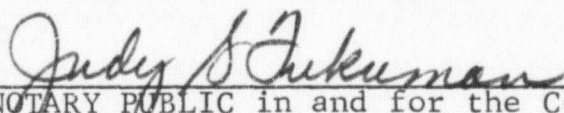
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PHYLLIS HORNE

Subscribed and sworn to before me
this 7th day of December, 1977.


NOTARY PUBLIC in and for the County
of Sacramento, State of California.

